

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: :  
 : Docket #14m2770  
UNITED STATES OF AMERICA, :  
 :  
Plaintiff, :  
 :  
- against - : New York, New York  
 : December 12, 2014  
CHARLES A. BENNETT, :  
 :  
Defendant. :  
 :  
----- :

PROCEEDINGS BEFORE  
THE HONORABLE KEVIN N. FOX,  
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

For the United States  
Of America:

UNITED STATES ATTORNEY'S OFFICE  
SOUTHERN DISTRICT OF NEW YORK  
BY: AMY LESTER, ESQ.  
One Saint Andrews Plaza  
New York, New York 10007

For Defendant:

FEDERAL DEFENDERS OF NEW YORK  
BY: JULIA GATTO, ESQ.  
52 Duane Street, Tenth Floor  
New York, New York 10007

Transcription Service: Carole Ludwig, *Transcription Services*  
141 East Third Street #3E  
New York, New York 10009  
Phone: (212) 420-0771  
Fax: (212) 420-6007

Proceedings recorded by electronic sound recording;  
Transcript produced by transcription service.

INDEX

E X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-Direct</u>	<u>Re-Cross</u>
----------------	---------------	--------------	------------------	-----------------

None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
---------------------------	--------------------	-----------	-----------	----------------------

None

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

THE CLERK: United States versus Charles A. Bennett, case number 14m2770. Counsel, please state your appearance.

MS. AMY LESTER: Your Honor, Amy Lester for the Government. Your Honor, before we begin with any substance may I pass up the phone that we're using to do the video conference so that Your Honor can be heard and also see the defendant and Ms. Gatto?

HONORABLE KEVIN N. FOX (THE COURT): Yes.

MS. LESTER: Your Honor, also with me at counsel table is Lavalley Jackson, an investigator with our office who has provided the phone that we're using for tonight's video conference. At present at the hospital is Special Agent Ben C. Coe of the Federal Bureau of Investigation.

THE COURT: Good evening.

MR. JACKSON: Good evening.

MS. JULIA GATTO: Good evening, Judge, Federal Defenders of New York by Julia Gatto for Mr. Bennett. Judge, I think if the prosecutor is going to speak it might make more sense to keep the phone at her table because we're having a little trouble hearing her, or maybe she can move closer to the bench.

THE COURT: All right, that's fine, I'll invite Ms. Lester to come close to the bench. Good evening to

1  
2 those of you at the hospital, I'm Judge Fox. May I have  
3 the date and time of arrest of Mr. Bennett, please.

4 MS. LESTER: Yes, Your Honor, the defendant was  
5 arrested today at approximately 11:00

6 THE COURT: Thank you. Mr. Bennett, the purpose  
7 of the proceeding is to advise you of certain rights that  
8 you have, to inform you of the charge made against you, to  
9 consider whether counsel should be appointed for you, and  
10 to determine under what conditions, if any, you might be  
11 released. Do you understand, sir?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: You have a right to remain silent,  
14 even if you have made statements to authorities already you  
15 need not make additional statements. Anything that you do  
16 say can be used against you. You have a right to be  
17 released either conditionally or unconditionally pending  
18 trial, unless I find that there are no conditions that  
19 would reasonably assure your presence in court and the  
20 safety of the community. You have a right to be represented  
21 by counsel during all court proceedings and during all  
22 questioning by authorities. In that connection, I received  
23 earlier via facsimile transmission from the hospital where  
24 you are I believe, a copy of a document labeled financial  
25 affidavit. I have that before me. Do you have a copy with

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

you, sir?

THE DEFENDANT: Yes. Yes, Your Honor.

THE COURT: Would you read the first line in the section labeled employment on the document before you, please?

THE DEFENDANT: Yes, I'm looking at it now.

MS. GATTO: Your Honor, what would you like him to read?

THE COURT: The first line in the box labeled employment.

THE DEFENDANT: Are you now employed?

MS. GATTO: Would you like him to continue?

THE COURT: Yes. Did you answer that question, and if so, read your response to the question.

THE DEFENDANT: No.

THE COURT: Would you continue reading, please?

THE DEFENDANT: Oh, if no, give month and year of last employment. And that was the year 2000. And how much did you earn per month, it was about \$180,000 -- I'm sorry, per year.

THE COURT: I want you to shift your attention to the section of the document that is labeled obligations and debt and read that section for me, please.

THE DEFENDANT: Debits and monthly bills, rent,

1  
2 utilities, loans, other accounts, et cetera. Description,  
3 rent and utilities, \$1,470 per month for rent and utilities  
4 \$300 per month.

5 THE COURT: All right. The information that you  
6 read to me mirrors the information on the document that is  
7 before me, so I believe that we're focusing on the same  
8 document. On that document there appears to be a  
9 signature. Would you raise your right hand, please. Do  
10 you swear or affirm that the statements contained in the  
11 financial affidavit that you prepared and from which you  
12 read to me are true statements?

13 THE DEFENDANT: Yes, they are, Your Honor.

14 THE COURT: And is your true signature on the  
15 financial affidavit that you read from?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Based on the information you've  
18 provided through the affidavit I'm satisfied that you're  
19 without the means to retain counsel, so I shall appoint Ms.  
20 Gatto to represent you. If you have made false statements  
21 through the affidavit, you may expose yourself to a new  
22 charge in connection with the false statements. If your  
23 financial circumstances change and you're able to retain  
24 counsel, you should advise the Court of your changed  
25 circumstance.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE DEFENDANT: Yes, Your Honor.

THE COURT: Ms. Gatto, have you received a copy of the complaint that was filed in this judicial district?

THE DEFENDANT: I have, Your Honor, and I've reviewed it with Mr. Bennett and we waive its public reading.

THE COURT: Very well. Mr. Bennett, you have a right to have a preliminary hearing held in connection with the charge that is outlined in the complaint. At the hearing the Government would have the burden of establishing that there is probably cause to believe that a crime is being committed as set forth in the complaint and that you committed it. If probable cause is not established, you'll be released from the charge, if it is established the Government will have the right to proceed to trial against you. If you are in custody the hearing will be held within 14 days, if you are not in custody the hearing will be held within 21 days. No hearing will be held before the date on which it is scheduled, you're either indicted by a grand jury or an information is filed against you by the Government. I shall fix a hearing date after we address the issue of bail.

I meant to indicate earlier, so I shall do so now that this presentment proceeding is being conducted

1  
2 remotely since you are at a hospital facility and are  
3 unable to appear in court. I am able to see you through the  
4 use of a telephone device and it's my understanding that  
5 you're able to see me also, is that correct, sir?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: All right, let me ask if both your  
8 counsel and counsel for the Government have received copies  
9 of the Pretrial Services report?

10 MS. LESTER: Yes, Your Honor, I have.

11 MS. GATTO: I have, too, Your Honor.

12 THE COURT: I have also reviewed that report, I am  
13 now going to direct my attention to the representative from  
14 the Government to hear what the Government's position is on  
15 bail. I will pass the mobile telephone device to her so  
16 that you can see her presentation, Mr. Bennett.

17 MS. LESTER: Your Honor, the Government seeks  
18 detention. The Government's proposal for detention is  
19 based primarily on the defendant as a risk of flight. The  
20 Government believes that there is a duty to hold the  
21 defendant accountable for the crimes against his victims  
22 and the only way to assure that he can be held accountable  
23 is to insure obviously his appearance in court. This  
24 defendant, in particular, has already demonstrated that he  
25 is willing to take great risk, indeed some might say the



1  
2 ultimate risk, in trying to avoid prosecution for these  
3 crimes, and that is by attempting to commit suicide. And  
4 now that he has been unsuccessful and is actually being  
5 prosecuted, we think it's very important that he be  
6 detained so that he can actually answer for those crimes.

7 I'll go through the statutory factors, first  
8 turning to the nature of the offense. As outlined in the  
9 complaint, this is a fraud that stretched over a number of  
10 years, more than 5 years, affected over 30 victims,  
11 including close friends and family members of the  
12 defendant. It was a brazen fraud in which the defendant  
13 blatantly lied to those individuals about the nature of  
14 what he was doing with the money that he gave to them. He  
15 told people that he was investing it on their behalf, but  
16 he, in fact, never invested any of the money, and instead  
17 used it for his own personal expenses and to pay back other  
18 individuals who had invested with him.

19 He took in millions of dollars from these people,  
20 over \$5 million, we believe. It was a complete betrayal of  
21 trust, obviously of people who were extremely close to him,  
22 and also people who had given him what he knew to be  
23 essentially their entire life savings. But nevertheless,  
24 the defendant continued this fraud and only gave it up when  
25 it became apparent that he would not be able to perpetuate

1  
2 it indefinitely. When several investors asked for  
3 redemptions that the defendant could not meet, that's what  
4 prompted him to commit suicide, or attempt to commit  
5 suicide, and to write a suicide note that is outlined in  
6 the complaint. And that takes me to the weight of the  
7 evidence in this case.

8           As outlined again, in the complaint, the suicide  
9 note makes clear that the defendant has admitted what he  
10 did. The strength of the Government's case is very strong,  
11 both because the defendant, himself, has admitted it, not  
12 only in the note, but in statements to the agents, as well.  
13 we have many statements from the victims as well as  
14 documents from the victims outlining the representations  
15 that were made by the defendant to them about what would be  
16 done with their money. He sent them email correspondence  
17 and other documents in which he represented to them that  
18 their money was growing. He told them that it was earning  
19 returns of certain percentage points and encouraged them  
20 not to redeem their money but to reinvest it with them and  
21 role it over into a new investment. And most of them did  
22 so, and therefore we have, as I say, dozens of victims who  
23 had an expectation that their money was growing when, in  
24 fact, it was not growing at all and they have lost a great  
25 deal of money, if not, in fact, all the money that they

1  
2 invested with the defendant.

3           Besides the victims' statements and the  
4 defendant's own statements, we also have bank account  
5 records which corroborate the documents provided by the  
6 victims which demonstrate wire transfers to the defendant  
7 from the victims, checks deposited by the defendant from  
8 the victims, and then also payments, both personal expenses  
9 by the defendant, and redemptions, so-called redemptions by  
10 the defendant to other victims of the scheme.

11           In addition, the Government has seized the  
12 defendant's computer, we've sought search warrants for his  
13 email accounts, and for other physical evidence, and those  
14 pieced of evidence corroborate the case as well.

15           Turning to the history and characteristics of the  
16 defendant, obviously someone who has chosen to betray his  
17 closest friends and family members has demonstrated that he  
18 is untrustworthy and cannot be, cannot be trusted basically  
19 with the opportunity to deal with life on his own. He has  
20 no one left, unfortunately, in his community of friends and  
21 family members, other than his mother, it appears, who is  
22 standing by him. The Pretrial Services report makes clear  
23 that his mother is willing to serve as a third party  
24 custodian but in the Government's view that is not  
25 sufficient to insure his appearance at court. First of

1  
2 all, it presents a number of logistical issues. If the  
3 defendant is residing in Minnesota but has no form of  
4 employment or income, and we understand that the mother's  
5 income and financial situation is also somewhat limited,  
6 the Government is not certain how the defendant would  
7 intend to travel back and forth between Minnesota and New  
8 York for court appearances. But even putting that aside --

9 THE COURT: What about the statute which would  
10 permit the United States Marshal to transport him for court  
11 proceedings?

12 MS. LESTER: Well, so that might be a possibility,  
13 Your Honor, but in terms of his own ability to continue a  
14 course of treatment, I mean obviously we recognize that  
15 this is someone who has mental health issues and that that  
16 needs to be looked after, Pretrial recognizes that as well  
17 in recommending continued mental health evaluation and  
18 treatment. But we are not certain or convinced, I think,  
19 that the mother is actually the best person to be looking  
20 after the defendant in his fragile state, and actually  
21 believe that if he is in custody he may be receiving the  
22 best chance of not causing future harm to himself and  
23 receiving further mental health treatment.

24 He has no employment, he has no place to live  
25 other than his mother's residence. He has no money or

1 13

2 financial resources other than his mother that we know of.  
3 And he is obviously a fragile individual who is at high  
4 risk, we believe, of again causing harm to himself or  
5 perhaps just fleeing in some way and not appearing for  
6 court. So for all of those reasons we think that detention  
7 is appropriate in this case.

8 THE COURT: Ms. Gatto?

9 MS. GATTO: Yes, Judge, thank you. Let me start  
10 with just a little background on what is the unusualness of  
11 this case. Ms. Lester described some of it, we are  
12 obviously in a hospital. So about six weeks ago Mr. Bennett  
13 attempted suicide by plunging into the Hudson River. He  
14 swallowed a lot of water and he suffered a lot of injuries,  
15 mostly lung related, and I think his lung actually  
16 collapsed. He is requiring some surgery. So he is here in  
17 Roosevelt Hospital for about six weeks. They're treating  
18 him really in two ways, one, physically, and two, for his  
19 mental health. And they are focusing primarily on his  
20 physical condition. So he is here on a regular medical  
21 unit, he see psychiatrists and he is doing really well  
22 physically. So the plan is for him to fully recuperate from  
23 the physical injuries and then the next step for him will  
24 be to go to the psych unit here at Roosevelt Hospital  
25 hopefully where he will have intensive psych treatment

1  
2 until they believe he can be discharged.

3           Judge, let me tell you my proposal and then work  
4 my way back on why I propose it this way. It's really kind  
5 of a two-pronged proposal. I propose that while Mr. Bennett  
6 is under the care of the hospital, before he's discharged,  
7 that he be could be (inaudible) without a bond and without  
8 the typical conditions, except for two conditions, one,  
9 that he may not leave the hospital until he's discharged;  
10 and two, within 24 hours of being discharged he has to  
11 report to the Court, to the Magistrate Court's office.  
12 After he's discharge then my proposal is a more traditional  
13 bail package which is as follows, a sizable bond cosigned  
14 by Mr. Bennett's mother and one of his sisters. Mr.  
15 Bennett's mother would serve as a third party custodian,  
16 Mr. Bennett would live with his mother in Minnesota and we  
17 would ask that he be supervised in Minnesota and we would  
18 also ask for mental health treatment and strict Pretrial  
19 supervision.

20           The concerns the Government raised about traveling  
21 back and forth can easily be addressed as the Court already  
22 alluded in travel orders. Mr. Bennett is indigent and he  
23 would qualify for the marshals for his paying for his  
24 flight. This case presents an unusual quirk and it's why I  
25 have to propose it the way that I do. If Mr. -- normally,

1

15

2 Your Honor, let me start this way, normally I would just  
3 recommend the bail package that I'm proposing, but it's  
4 impossible because Mr. Bennett is in prison for him to,  
5 quote-unquote, be released today under those conditions.  
6 You're frozen, Judge, I just want to make sure you hear me.

7 THE COURT: I hear you.

8 MS. GATTO: Okay, good. Thank you, Judge. So  
9 because he's here in the hospital he can't sign his bond,  
10 which is a typical condition for him to being released. So  
11 he will remain in custody even if the bail conditions were  
12 set because he can't go to the courthouse and sign the  
13 bond. So we're really in an unusual situation, in order to  
14 release him, we have to either, we can only really ROR him,  
15 although I have another alternative but I think this is the  
16 easiest. The Court is really faced with one of two options,  
17 either RORing him while he's in the hospital, or having him  
18 in custody.

19 Judge, having him in custody has incredible  
20 negative consequences that are far more restrictive than we  
21 normally see, are super counterproductive and I can't  
22 imagine anybody wants it. If Mr. Bennett is in the  
23 hospital and in custody four terrible things happen. One,  
24 he gets transferred to the custody of the service that's  
25 contracted by the marshals who have to stand guard in front

1  
2 of his door 24 hours a day, and I'll talk about that. But  
3 the worst consequence, the incredibly detrimental  
4 consequence of this is that Mr. Bennett will have to be  
5 restrained in his bed 24 hour a day while he's in the  
6 hospital and in, quote-unquote, custody. He will only be  
7 unrestrained when he can get the marshals and he asks them  
8 to either take him to the bathroom or if he wants to take a  
9 walk around. I can't imagine anyone who is sitting here  
10 thinks that that's the appropriate restrictions on this  
11 individual. One, this is a non-presumption case, this is a  
12 man who has no criminal record. I'll talk a little bit more  
13 about his background but the Government is wrong that he  
14 has nobody. His mother is sitting here with me, she's been  
15 sitting with me in the hospital since 3:00, I understand  
16 she sits here every single day in the hospital, she came  
17 here from Minnesota. This is somebody who is certainly  
18 available and it's someone I can't imagine anyone wants  
19 tied to their bed for 24 hours a day. It doesn't make sense  
20 under the Bail Reform Act and it doesn't make sense for his  
21 health, I can't even think of all the detrimental  
22 consequences, for his physical health and for his mental  
23 health.

24           There are other big consequences that come from  
25 this. Right now he is treated on the medical unit and the



1  
2 expectation if he is released is that he will go to the  
3 psych unit here in the hospital that he's treated at and he  
4 will have the continuity of the psychiatrists with whom  
5 he's formed a relationship. If he's in custody, instead of  
6 going to the psych unit here he'll be taken to Bellevue  
7 because there is a contract between the BOP and Bellevue  
8 and all inmates who are in psych, hospitalized in a psych  
9 unit must be at Bellevue. He'll lose his doctors. I will  
10 say I've been here for a couple of hours, this is a  
11 fabulous, fantastic hospital, I've seen the psychiatrists  
12 themselves come, I've seen the relationship he's had and it  
13 would be tragic for him to lose that relationship because  
14 he's, quote-unquote, in custody and has to go to an  
15 entirely different facility that is nothing as high end as  
16 this facility.

17           There is also the problem of a guard standing in  
18 front of his door for someone who has really significant  
19 mental health issues including anxiety and depression, it  
20 won't help, it won't support the recovery, it won't help  
21 with the mental wellbeing. And there is one additional  
22 problem, I don't think it's as big as the others but  
23 originally I thought the Government was going to propose  
24 detention until he was discharged and then we would talk  
25 about a bail package. I was uncomfortable with that for

1 18

2 many reasons, some of them I highlighted but also if we did  
3 it that way, if he was detained, in addition to the  
4 restraints and the guard and the Bellevue problem, if he  
5 were released late in the day and the marshals couldn't  
6 bring him to the court, he would have to spend a day, a  
7 night at the MCC or the MDC. In his mental state, even  
8 after discharge, I don't think a prison facility is the  
9 right place.

10 And I'll pause here to respond to something that  
11 Ms. Lester said. She said that based on the suicide attempt  
12 and the clear mental health issues, she thought a safer and  
13 a better place for him might be at the MDC or the MCC  
14 pending trial. There is absolutely no mental health  
15 treatment at the MCC or the MDC. There is a therapist that  
16 will come around and talk to you but there is no talk  
17 therapy, he might be prescribed the medicines he's  
18 prescribed here, but it would be nothing like the intensive  
19 one on one treatment he's receiving from doctors who  
20 already know him and already know his case. So if the  
21 Government's argument even in part is that he is going to  
22 get better treatment or he's better off in a prison, I can  
23 assure you he's not, he is certainly better off here moving  
24 around freely and with his doctors.

25 The Government seems, I think the Government's

1  
2 only point is that they think that detention is necessary  
3 to alleviate a concern of risk of flight. Again, I  
4 highlight this is a non-presumption case, this is an  
5 individual who has no record. But the greatest argument in  
6 our favor is this is an individual who has been cooperating  
7 and working with law enforcement agents for about four  
8 weeks. He was admitted six weeks ago, within two weeks of  
9 the suicide attempt after the law enforcement made notice  
10 of this suicide letter, agents came and saw him, told him  
11 that he was under investigation, he waived his Miranda  
12 Rights and he has given them a full statement. That's four  
13 weeks he's known he's under investigation, that's four  
14 weeks where he could walk around, that's four weeks where  
15 if he was going to flee this hospital he would have pulled  
16 the plug and fled this hospital. He didn't. He is  
17 committed to his physical and mental wellbeing, from the  
18 moment I met him his only concern was can I stay in this  
19 hospital. He was concerned that this, at presentment they  
20 were going to take him to prison and he wasn't going to be  
21 able to finish the full course of treatment.

22           This is someone who wants one thing only and  
23 that's to continue and complete his treatment here. After  
24 that he has a supportive family who is going to help him  
25 with bail conditions and that's why I've done it in two

1  
2 ways. We recognize that the risk of flight, which I think  
3 is minimal, may be higher when he's not in a facility like  
4 this but that is why I have pretty significant bail  
5 conditions. If there is any concern, I think there  
6 shouldn't be for the reasons I've said, but any concern  
7 that he could just walk out the door, Your Honor, let me  
8 tell you some things I've learned in my time here at the  
9 hospital. Because Mr. Bennett is on a medical floor,  
10 attempted suicide, he's assigned a one on one suicide  
11 prevention counselor who is outside this door right now.  
12 Their assignment is to have someone 24 hours a day have  
13 their actual eyes on him. We had to ask the counselor to  
14 leave when I was having privileged communications and they  
15 still had to be in a place where they could actually see  
16 him. And even now as we speak the one on one counselor is  
17 outside. So we are in a medical unit that is very strictly  
18 supervised, and strictly supervised just for Mr. Bennett,  
19 he is not on a floor with others with the same mental  
20 health issues. So he is closely watched. So he doesn't want  
21 to leave and even if he did want to leave there are people  
22 watching him all the time.

23           As I started, Your Honor, his expected course of  
24 treatment is to complete the physical rehabilitation on  
25 this floor and then he is going to go to the psych floor.

1  
2 The psych floor is even higher security than this floor, it  
3 is a lock and key floor. Someone can't just leave it.  
4 Someone can't just say I'd like to be discharged and leave.  
5 We're talking at a minimum sometime next week, maybe the  
6 week after he'll go to that floor. At that point on that  
7 floor I don't even think the Government could suggest there  
8 is any risk of flight, it's a high security floor where he  
9 is under lock and key as if he is in prison.

10 Judge, I feel like I must respond to one other  
11 thing that the Government said, although I don't know it's  
12 necessarily important. The Government suggested that Mr.  
13 Bennett is a risk of flight because he attempted to take  
14 his life and that shows some ultimate need to avoid  
15 prosecution. There was no indication that anyone had  
16 alleged fraud at that point. There was no indication that  
17 the, quote-unquote, jig was up. There are other issues  
18 here, this is someone who is suffering with great guilt and  
19 remorse, and (inaudible) of responsibility might say above  
20 and beyond, it is in no way an indication of someone who is  
21 a not going to show up in court, certainly not when his  
22 mother signs the bond, the woman who is sitting next to him  
23 every day since he tried to kill himself.

24 This is certainly aailable case, I think bail is  
25 appropriate, I'm asking for us to do it in the two ways

1  
2 that, the bifurcated way that I have proposed, because to  
3 do it any other way will be incredibly counterproductive to  
4 his care and his wellbeing.

5 THE COURT: He's not in a secure wing of the  
6 hospital now?

7 MS. GATTO: Correct.

8 THE COURT: So if he --

9 MS. GATTO: He's in a public unit.

10 THE COURT: The counselor who must observe him is  
11 not there to restrain him, is that correct?

12 MS. GATTO: Absolutely not, Your Honor. That's  
13 right.

14 THE COURT: So if he is released into his own  
15 recognizance he's free to walk out the door of the  
16 hospital.

17 MS. GATTO: Well that's why I suggested those two  
18 additional conditions, that he would be violating a court  
19 order if he did walk out. So it would be released on his  
20 own recognizance with two conditions. Those conditions are  
21 he is not permitted to leave the courthouse, if he did he's  
22 in violation of a court order and he must report to court  
23 within 24 hours after leaving.

24 THE COURT: But what assurance is there that he is  
25 going to meet those two conditions? Once he is released

1  
2 into his own recognizance, and I can appreciate, given the  
3 information that's being provided to me that he may not be  
4 at this juncture exhibiting the best judgment, what  
5 assurance is there that he just does not walk out the door  
6 because there is no one to restrain him, there is no one to  
7 insure that he would remain for the medical attention and  
8 then go to the psychiatric wing of the facility to get the  
9 mental health treatment that you've been discussing.

10 MS. GATTO: Well I think that he still could be  
11 charged with some sort of bail jumping or some sort of  
12 violation of a court order, some sort of contempt.

13 THE COURT: Oh, that's certain, but the object is  
14 to have in place conditions that will insure that a person  
15 is, if conditions can be fashioned, be in court whenever he  
16 or she needs to be there by direction of judicial officer.

17 MS. GATTO: Right. So my other proposal for this  
18 to deal with this would be as follows --

19 THE COURT: The phone has now frozen, I am unable  
20 to hear Ms. Gatto. I missed some of what you said, the  
21 phone froze, Ms. Gatto, when you began with your second  
22 proposal I couldn't hear anything after that.

23 MS. GATTO: If the Court was concerned that there  
24 wasn't enough assurance in the package that I'm proposing,  
25 I would just say one other matter, I think his commitment

1  
2 to his physical and mental wellbeing is what's driving him  
3 here and can give the Court confidence. But if the Court  
4 was concerned there wasn't enough weight behind this  
5 package in this period of time he's at least on the medical  
6 unit, what I would propose is Mr. Bennett's mother could  
7 sign the bond. Mr. Bennett would be willing to sign a bond  
8 which would solve this problem, the problem is the only  
9 place the bond can be signed, and I've confirmed this with  
10 the courthouse, is in a courthouse. So he's not medically  
11 well enough to get to the courthouse to sign.

12           Typically what we do is we say, oh, he'll be  
13 released tonight on his own signature, but we can't do  
14 that. So if we could fashion it with a way that if he would  
15 be released, quote-unquote, tonight, because I think it's  
16 important that the record indicate that he's released for  
17 the various reasons I've explained, with his mother's  
18 signature by Monday or Tuesday which she will still be in  
19 town, that would give, with a sizable bond, perhaps that  
20 would give the Court the confidence it needs, and a  
21 condition being he must stay here until he is discharged by  
22 his doctors, then if he walked out his mom would be on the  
23 line for whatever sizable amount the Court thinks is  
24 appropriate here. And if the Court wanted she could take on  
25 the third party custodian responsibilities now since she



1  
2 intends to stay here until he's discharged, or at least  
3 until he gets to the psych unit.

4           So I think, I'm not sure, but it sounds like the  
5 Court may agree with me that once he's in the psych unit  
6 there is more, we can all have more confidence that he  
7 can't just leave if he wants to, with or without bail  
8 conditions, it's this period of time where he fully  
9 (inaudible) physically that may be the issue. And so I  
10 propose that, I'm not quite sure how it can be worded but  
11 my proposal would be release tonight with the signature of  
12 his mother on a sizable bond by Monday or Tuesday.

13           THE COURT: All right, let me return to Ms. Lester  
14 to hear what her views are on your proposals.

15           MS. LESTER: Thank you, Your Honor. First, I just  
16 want to respond specifically to a few points that Ms. Gatto  
17 made. With respect to the restraint while in the custody of  
18 the contractor that the US Marshals use when someone is in  
19 custody in a hospital, I spoke with the marshals earlier  
20 today and they told me that their understanding is that the  
21 person is restrained with a shackle on one of their ankles  
22 which is attached to the bed, but that there is some room  
23 on the shackle so that the person can actually get up from  
24 the bed and walk, for example, to the bathroom in their  
25 room without having to ask for assistance.

1  
2 In terms of another, a few other points that Ms.  
3 Gatto made, one specifically about whether the defendant  
4 was trying to avoid responsibility or avoid prosecution by  
5 attempting to commit suicide, the Government actually does  
6 have evidence, not only in the suicide note, itself, but in  
7 communications that he defendant had with the victims in  
8 the weeks and days before he made his suicide attempt that,  
9 in fact, he did believe the jig was up and that he believed  
10 it was only a matter of time before, meaning very soon,  
11 that he would, in fact, be caught, and that he contemplated  
12 going to jail. That is specifically included in the suicide  
13 note, not in the portions that were quoted in the  
14 complaint, but he does reference that knowing that he will  
15 likely face a very long prison sentence and saying that he  
16 doesn't think that he's able to cope with that, and so he's  
17 seeking another way out. He acknowledges in the note that  
18 that's the cowardly thing to do but nonetheless, he says he  
19 doesn't know what else to do. And, in fact, that is what  
20 he attempted to do was to take that way out instead of  
21 facing responsibility for his crimes.

22 In terms of the defendant's being cooperative with  
23 law enforcement, it is true that the defendant was  
24 Mirandized and gave a statement to law enforcement, but  
25 it's not entirely true that he could have left the hospital

1  
2 under his own steam since that time. The defendant has  
3 since had a couple of medical procedures, Ms. Gatto  
4 mentioned one, that he had to have surgery as a result of a  
5 lung infection. He's also had pneumonia and was receiving  
6 oxygen. So it's not the case that the defendant was  
7 actually able to walk out of the hospital during that  
8 entire time and, in fact, chose to stay. In fact, he was  
9 receiving intensive treatment which wouldn't have allowed  
10 him to leave the hospital physically.

11 In terms of Ms. Gatto's second proposal, let me  
12 just mention that I think that if the defendant were deemed  
13 well enough to leave the hospital for a few hours, my  
14 understanding is that the marshals would transport the  
15 defendant to the hospital to sign a bond. So if Your Honor  
16 were inclined to set a bond that could be fulfilled at  
17 sometime in the near future, the defendant might be able to  
18 come down and sign the bond and then go back to the  
19 hospital.

20 For example, if he's released from the general  
21 medical ward as Ms. Gatto alluded to in the next week or  
22 so, it's probable that at that point because he would be  
23 transferred to a psych ward, he would be able to be  
24 transported down to the courthouse just for a few hours and  
25 sign a bond. But the Government's view is that if a bond

1  
2 is going to be imposed it has to contain substantial  
3 conditions, including, we would request, electronic  
4 monitoring or home confinement, some sort of assurance as  
5 the Court said that this defendant is not going to just  
6 choose to ignore his responsibilities as he has shown he is  
7 willing to do already.

8 I think that during the time period when he is in  
9 the general medical ward, particularly because his mental  
10 situation is still tentative, it is important for him to be  
11 watched by someone who can insure that he doesn't leave,  
12 and not only not leave, but cause harm to himself. The  
13 Government's concern is not only that he leave the hospital  
14 and not return to court but that he actually harm himself.  
15 So I think that really the only way to do that is to have  
16 someone watching over him who can actually restrain him  
17 from leaving.

18 MS. GATTO: Judge, if I could briefly respond to  
19 the concern about while on the medical unit Mr. Bennett  
20 doesn't harm himself that the Government is worried about,  
21 that's exactly what the one on one suicide prevention  
22 counselor is. That is always the concern with someone who  
23 is in the hospital and that is exactly what they're trained  
24 in. While they are probably not trained in somebody who is  
25 leaving the hospital because they are trying to flee from a

1  
2 prosecution, exactly the concern raised by the Government  
3 is the concern that's here. And if that is really the  
4 Government's concern that Mr. Bennett doesn't cause harm to  
5 himself, then the hospital and the way the doctors want to  
6 treat him at this hospital, is the best place for him to  
7 be. And I can guarantee that the mental health  
8 professionals who are treating Mr. Bennett do not think  
9 it's wise for his mental wellbeing that he be shackled with  
10 a leg restraint to his bed even if it's long enough to get  
11 to his bathroom. I've been in his room and I don't think a  
12 shackle would be long enough. I spoke, along with the  
13 agent, at length with the contract marshals who are sitting  
14 here waiting to shackle him if he's in custody and they  
15 said that they would have to, every time he had to use the  
16 bathroom they would have to shackle him, and if there is  
17 any concern on the Government's part of Mr. Bennett not  
18 harming himself, then continued treatment at the doctor's  
19 direction would be important, with the same doctors and  
20 mental health treatment here on the (inaudible), not in  
21 prison where there is no mental health treatment. And I  
22 feel strongly about saying that because it would be a real  
23 tragedy in my opinion for this guy not to get the mental  
24 health treatment he so desperately needs and he seems to be  
25 doing well. I mean I just met him today.

1  
2 I do also want to briefly respond to the idea of  
3 electronic monitoring or home confinement when he is  
4 released and if he is released to his mother's custody in  
5 Minnesota. I thought about that as an option. Again, one  
6 of my main concerns is Mr. Bennett's mental health,  
7 wellbeing and treatment. I don't think someone who suffers  
8 from anxiety is the ideal person for electronic monitoring  
9 and that's why I proposed, I came up with the proposal of  
10 the third party custodian to address any concerns of him on  
11 the outside. I know he also, when he gets to Minnesota,  
12 wants to try to reintegrate to the community, he's going to  
13 be in intensive mental health treatment, he wants to get  
14 some sort of small job whatever it will be. If he's on home  
15 confinement it is going to be impossible for him to go out.  
16 It's true that they will give blackout periods for job  
17 search, but when someone is unemployed and on home  
18 confinement and has to ask permission every time they go  
19 for an interview or put in an application, even if it's at  
20 a sporting good store or Starbucks or whatever it is, it  
21 takes too much time, someone else gets that job.

22 He wants to go to Minnesota, he wants to deal with  
23 this case, he wants to go to mental health treatment and he  
24 wants to reintegrate into the community. And that's why I  
25 didn't propose it, I thought of it, and so I just wanted to

1  
2 address it, other than that I don't have any other  
3 responses.

4 THE COURT: Until the arrest today, what was the  
5 physical condition of Mr. Bennett?

6 MS. GATTO: So I understand that he has recently  
7 been well enough within the last couple of days to even go  
8 off the floor.

9 THE DEFENDANT: No, I don't go off the floor.

10 MS. GATTO: I'm sorry, Your Honor, let me make  
11 sure I get all the facts. Your Honor, I'm glad you asked  
12 that question, because I didn't fully understand the facts.  
13 Actually about two weeks ago he was cleared, he was well  
14 enough to go off of the medical unit floor and he had begun  
15 his psych treatment. So that means that physically he was  
16 well enough to be out in the community, it was just his  
17 mental health that was keeping him here. And he was cleared  
18 and he went to the psych unit and he was there for two days  
19 and unfortunately he developed pneumonia and so he came  
20 back.

21 So to answer your question, he was well enough to  
22 actually even be discharged based on his physical  
23 condition. He was well enough that he actually was  
24 discharged from this floor. So if the question is  
25 addressing the Government's concern that he didn't leave

1  
2 because he physically couldn't, it's simply not true, he  
3 physically could have and indeed he was off of this floor.  
4 So thank you for asking that, Judge.

5 THE COURT: So if I'm understanding correctly, for  
6 a two week period he's on the medical unit and then for two  
7 days he's transferred to the psych unit, am I understanding  
8 correctly?

9 MS. GATTO: I just want to get the timing right.  
10 Okay, so now I understand. First he spent the first ten  
11 days here in an ICU, then he was transferred to this floor  
12 where he was here about five days or so, and then he was  
13 well enough physically to be transferred to the psych unit.  
14 He was there and then he got pneumonia and he came back.

15 THE COURT: And the period leading up to today's  
16 arrest, Mr. Bennett is not in custody, is that right?

17 MS. GATTO: Correct, Your Honor.

18 THE COURT: So no one is guarding him and  
19 restraining him from leaving the facility if he wanted to,  
20 if he was physically able to.

21 MS. GATTO: Yes, that's correct, but he knew the  
22 arrest was coming, it wasn't a surprise, because the agents  
23 have been here frequently and there has been no secret  
24 about the reason for that. So while it's true he hasn't  
25 been formally arrested, he certainly knew it was coming,



1  
2 this wasn't a surprise today, he's known that for I think  
3 about a month. He's know that for about a month including  
4 in the period of time where he was well enough that he  
5 certainly could have left.

6 THE COURT: There are at least five days when he's  
7 in the medical unit after leaving the intensive care unit  
8 and before going to the psychiatric unit where no one is  
9 guarding him, no one is restraining him and he is free to  
10 leave the medical facility if he wishes to do so, is that  
11 correct?

12 MS. GATTO: That's correct, and physically able.  
13 And In that period he knew that he was under investigation  
14 leading to an arrest.

15 THE COURT: All right, do you want to be heard  
16 further, Ms. Lester?

17 MS. LESTER: No, Your Honor.

18 THE COURT: I need to check one thing which means  
19 I must place the phone down and reach for a book. So you  
20 may not be able to see me for a moment. I was considering  
21 continuing the proceeding for a few days but the pertinent  
22 statute, 3142 or Title 18, requires me to at this juncture  
23 either release the defendant on his own recognizance on  
24 conditions or detain him without bail. I am not persuaded  
25 that there are no conditions that could be fashioned to

1  
2 permit Mr. Bennett to be at liberty. I've considered the  
3 factors that are in Section 3142 of Title 18 in reaching  
4 that determination and have considered the arguments urged  
5 for detention made by Ms. Lester and the arguments against  
6 it made by Ms. Gatto. I am not altogether certain that the  
7 type of hybrid proposal that you made, Ms. Gatto, that Mr.  
8 Bennett be released into his own recognizance pending his  
9 discharge and then have bail conditions imposed upon him  
10 really works. If you are true to 3142 which requires that  
11 the least restrictive bail conditions be imposed, once it's  
12 determined that a person can be at liberty, and if the  
13 least restrictive condition is to release him into his own  
14 recognizance, to then impose additional conditions such as  
15 you were suggesting, seems somewhat intentioned with that.

16           The fact that Mr. Bennett was for about five days  
17 aware because of his interaction with the FBI agent who  
18 swore to the complaint and maybe other FBI agents, that it  
19 was likely that charges would be preferred against him, and  
20 was able physically to leave the confines of the hospital  
21 but elected not to do so, is strong evidence that he is not  
22 inclined to flee. I don't think that he needs to be  
23 shackled to his bed, in light of that, and so I'm  
24 struggling with what might be a set of conditions that  
25 would insure that he's going to attend court when he's

1  
2 directed to do so and also allow him to obtain the medical  
3 and psychiatric treatment that it has been suggested to me  
4 that he needs.

5           I don't know how to best accomplish what I want in  
6 the least restrictive way possible since I believe that  
7 there are conditions that should be fashioned for Mr.  
8 Bennett. I don't think that he should be released into his  
9 own recognizance but I'm mindful of what you have urged  
10 upon me Ms. Gatto that the type of restraint that he would  
11 have to be under because he will be in custody if he's not  
12 released into his own recognizance might have an adverse  
13 effect on the treatment that he is getting, his wellbeing,  
14 psychological I'm focusing on, not physical, and I don't  
15 want to do anything to impede that process. I am wondering  
16 if a bond signing, because it has to be, it appears from  
17 the bond, done in the presence of a deputy clerk, which  
18 wouldn't necessarily require physical presence in the  
19 court, whether if it could be done remotely, that is a  
20 clerk observe Mr. Bennett sign a bond, that that might be  
21 away to address matters since he can't, it sounds like at  
22 this juncture, leave the hospital because that would not be  
23 in his best interest.

24           MS. GATTO: Judge, if that was a possibility we'd  
25 have no objection to that. I don't think that that could be

1  
2 done tonight unfortunately unless the clerks are still  
3 there and willing to come here. But we would have no  
4 objection to signing a bond here in the courthouse if there  
5 was a procedure for that --

6 THE COURT: You mean in the hospital.

7 MS. GATTO: I'm sorry, in the hospital, yes,  
8 Judge, and my concern would only be this weekend, I assume  
9 that could be accomplished on Monday and I would be --

10 THE COURT: I don't know if it's possible, as I  
11 said. I looked at the bond form and it appears that where  
12 Mr. Bennett would have to sign declaring certain things to  
13 be understood by him, that that has to be executed in the  
14 presence of a deputy clerk who is reviewing the bond with  
15 him. So I'm wondering whether as we're proceeding remotely,  
16 if a similar process could not be put in place to allow a  
17 clerk, a deputy clerk to review the bond with Mr. Bennett  
18 remotely, observe him as I'm observing him, sign the  
19 document, perhaps the document could be placed near the  
20 camera so that the clerk could see that it was signed and  
21 then have it transmitted and filed and proceed that way. It  
22 may be the case that it cannot be done but I'm trying to  
23 think of a way to facilitate matters.

24 MS. GATTO: Judge, I think if the Government had  
25 no objection to it, we certainly have no objection to it,

1  
2 then it probably can be done.

3           THE COURT: Well we're not the Clerk of Court and  
4 I don't know what constrictions are on the Clerk or Court,  
5 either by policy, rule or regulation issued by the  
6 Administrative Office of the Court. So I am suggesting that  
7 perhaps this might be a means to resolve the matter that  
8 we've been addressing but the Clerk or Court may on Monday  
9 say that she's unable to do that because of some policy or  
10 some regulation issued by the Administrative Office of the  
11 Court. I don't know that, I don't pretend to know the work  
12 of the Clerk of Court as intimately as she does, so that's  
13 why I'm speaking in the cautious way that I'm speaking, if  
14 could be done remotely, I don't know that it can. But if it  
15 can be I think that might be a way to address some of the  
16 concerns that you mentioned.

17           So maybe it is the case that you should explore  
18 that with the Clerk or Court on Monday. I'm prepared to fix  
19 bail conditions that would require Mr. Bennett to sign a  
20 bond. And maybe if the Clerk of Court tells you that it's  
21 impossible to do a remote signing, then maybe a new  
22 application to have his bail conditions examined anew might  
23 have to be made to a judicial officer.

24           MS. GATTO: Judge, I'm happy to talk to the Clerk  
25 of the Court and do my own research over the weekend. I

1  
2 would just ask, because I have a real concern over this  
3 weekend, that if the release order requires his signature  
4 before he's released, that this weekend, one, he'll be  
5 shackled, and if this isn't done on Monday there is a small  
6 possibility but a possibility that he could be declared fit  
7 on Monday. That's the absolute earliest it could happen, I  
8 spoke to the psychiatrist, and if that happened while he  
9 was in custody then he'll be removed to Bellevue and he'll  
10 lose his doctors.

11           So my proposal is what we often do when someone is  
12 released on their own signature with X number of days for a  
13 cosigners signature, if the Court would consider releasing  
14 Mr., quote-unquote, releasing Mr. Bennett tonight with his  
15 signature by Monday, hoping, fingers crossed, that I can  
16 figure out how to do that remotely if not then I will have  
17 another application but we would ask you to consider that,  
18 Judge.

19           THE COURT: Well what prevents you from getting a  
20 protective order that delays his transfer from the medical  
21 unit to the psychiatric unit for a number of hours, let's  
22 say, or a day, which would insure that he movement out of  
23 Roosevelt to Bellevue would be postponed while you either  
24 pursue getting a bond signed remotely or having him brought  
25 to the court or something else?

1  
2 MS. GATTO: One, I could certainly try that but I  
3 don't know how to do that and I will have to do the  
4 research over the weekend, and two, I spoke to the  
5 psychiatrist about this, about how we could avoid that if  
6 Mr. Bennett were put into custody. The psychiatrist, who is  
7 just a psychiatrist and doesn't deal with these proceedings  
8 seemed to believe that that is what will happen.

9 Now I appreciate that there may be some process  
10 that I can look into, I would be worried about it, just  
11 based on my experience with those kinds of things, and I'm  
12 also concerned, my concern is two-fold, as you know, it's  
13 not just the Bellevue, although I'm incredibly concerned  
14 Bellevue --

15 THE COURT: I have to say that I'm getting a  
16 prompt that there's low battery.

17 MS. GATTO: Oh, yeah, so I don't know if that's  
18 Ms. Lester's phone, but if she has a charger.

19 MS. LESTER: I don't and it's not my phone.

20 THE COURT: All right.

21 MS. GATTO: Judge, you can hear me though?

22 THE COURT: I can hear you and see you, I'm told  
23 perhaps we have another 20 minutes.

24 MS. GATTO: So my point was this, I'm concerned  
25 about the transfer to Bellevue and I can certainly look

1  
2 into that process. I'm also very concerned about a weekend  
3 at a very delicate stage in his recovery where he is  
4 shackled and there are guards stationed at his door. I  
5 spoke to his --

6 THE COURT: Well, you know, that's a consequence  
7 of having being arrested. He's in custody.

8 MS. GATTO: Yes, Judge, but if he were not in the  
9 hospital, if we were in court, nobody, nobody, not even the  
10 Government would say it's appropriate to shackle him to his  
11 bed.

12 THE COURT: But he's in a medical facility and you  
13 have to adapt to the circumstance you're in. I'm not eager  
14 to have Mr. Bennett shackled to a bed or anything else, I  
15 appreciate that that might retard his treatment and  
16 recovery. So that's not a course I'd like to see pursued  
17 but you must be mindful that he is arrested now on serious  
18 charges and he is in custody and he has to be in a secure  
19 type environment and that may mean being shackled.

20 MS. GATTO: I appreciate that. The timing of all  
21 of this which was out of his control, part of the problem  
22 here, we're very late on Friday and so what things could be  
23 done on a working day can't be done. We had no control  
24 over the timing, the Government did, they elected to do  
25 this arrest today. I don't profess to know or even attempt



1  
2 to know why they make the decisions they did, but the  
3 question for the Court is what are the least restrictive  
4 conditions and I don't think anyone thinks that this  
5 condition, being shackled to his bed, even if it's only for  
6 two days assuming I can figure this all out on Monday, is  
7 the least restrictive condition. And I appreciated what the  
8 Court said before about tension of me asking for ROR but  
9 then also saying that bail conditions should be set, and I  
10 think maybe I'll take this opportunity, just if I may  
11 address that again, I think that that makes sense actually,  
12 I don't think that that's (inaudible). I think while he is  
13 in a facility that he 100 percent wants to be at, that he  
14 is committed to be at, that the conditions don't need to be  
15 as restrictive because the risk of flight, which is the  
16 only risk we have here, there is no danger to the public,  
17 the risk of flight is so minimized by the fact that he is  
18 in a hospital, it's not a prison, I know that, it's not a  
19 prison, he could leave but he doesn't want to leave. And we  
20 have no indication that he wants to leave and in fact we  
21 have every indication that he wants to stay.

22           So for the purposes of this two-fold procedure, I  
23 say it only because he's in the circumstance he is, if he  
24 were not in the hospital I think bail conditions should be  
25 sent but while in a hospital awaiting to go to a psych

1  
2 treatment for (inaudible) that it makes sense. So I just  
3 put it out there because I see where this is going and I'm  
4 so concerned that this man is going to take a terrible step  
5 back.

6 Just the word shackles, just when the agent was  
7 kind enough to come and tell us, Judge, because nobody knew  
8 about the shackles when we started today --

9 THE COURT: Well, you must have imagined that once  
10 he's in custody in a hospital facility there is going to be  
11 some restraint of some sort, either a guard, or a shackle  
12 or combination of both.

13 MS. GATTO: I did anticipate the guard, Your  
14 Honor, I've been here all day since he was arrested, I  
15 assumed it would be similar and we had lots of discussions  
16 about the guard, but honestly, Judge, I certainly had no  
17 idea, I don't think the Government knew, I know the agent  
18 didn't know that shackles were part of it. When the agent  
19 found out he was so kind that he came in and he said, look,  
20 I just want to let you people know that this is the  
21 situation, and I could see my client's blood pressure rise,  
22 I could hear his breathing becoming more shallow. Just the  
23 thought of it. Just the thought of it in the state he was  
24 at created a whole level of stress that this individual  
25 shouldn't be under and doesn't have to be under, under the

1  
2 least restrictive conditions for what he's charged with,  
3 Judge.

4 THE COURT: All right.

5 MS. LESTER: Your Honor, if I could just add  
6 something on issue whether the defendant might be  
7 transferred unwittingly basically to Bellevue. The  
8 hospital staff has actually been extremely cooperative  
9 throughout the entirety of his stay there and I'm sure that  
10 if they were made aware of the situation there would be no  
11 problem in asking for a delay of a day or two if that sort  
12 of situation arose. So to the extent the Court's concerned  
13 about that or Ms. Gatto would have to seek an order, that  
14 probably would not be necessary if we just consulted with  
15 the hospital staff.

16 MS. GATTO: Judge, that's not right, I have  
17 consulted with the hospital staff, I spoke with Mr., one of  
18 many of Mr. Bennett's psychiatrists this morning, that's  
19 how I knew this, I didn't even know this was a possibility.  
20 She's the one who alerted me to it and when I became so  
21 alarmed about it she seemed to indicate that there was  
22 nothing they could do, not that they wanted it but there  
23 was nothing they could do. So Ms. Lester is wrong, they are  
24 super cooperative here and very nice and very kind and very  
25 helpful but it's out of their control, it's a financial

1  
2 contract situation because the financial responsibility for  
3 his care transfers from him to the BOP once he's in custody  
4 and the BOP has a contract with one hospital.

5 THE COURT: Are you able to have Mr. Bennett's  
6 physician or physicians alert you prior to his discharge  
7 sufficient enough so that a proceeding could be held in the  
8 court, a bail review hearing in the court?

9 MS. GATTO: I don't know, Judge, I have not seen  
10 any of his physical doctors today, I have only spoken to  
11 various psychiatrists who would not be in charge of moving  
12 to the psych unit when he would be released here, it would  
13 be his medical doctors. I have been here since about 2:00  
14 and I don't think we've seen them and -- so I don't have  
15 the answer to that. I know that there must be some sort of  
16 releases and stuff that Mr. Bennett must sign, which he  
17 certainly would sign.

18 THE COURT: That's not my concern, what I'm  
19 thinking is that prior to his discharge, if there is notice  
20 given a bail review hearing could be held, let's say he is  
21 going to be discharged on Tuesday and he's given notice of  
22 that Monday evening or afternoon or whatever it may be, a  
23 bail review hearing could ensue immediately thereafter and  
24 the issue of conditions, if any, might be revisited and  
25 conditions imposed appropriately to insure that he is

1  
2 monitored and gets treatment, if necessary, and will be  
3 available to appear in court when needed.

4 MS. GATTO: Judge, I can certainly endeavor to do  
5 that, from my end that leaves a lot up to chance, it's a  
6 lot out of my control, it's up to a doctor alerting me when  
7 conditions are met which I don't know. I am happy to do  
8 that but I'm concerned that it will be too late. I think  
9 we're dealing with a scene that moves, that when the forms  
10 are filled they're filled, and when the contract takes  
11 place, it takes place. Whatever happens here I'm going to  
12 do everything I can to hopefully make sure that continuity  
13 of care, but it's always hard for me to let control of  
14 things, think some of that will be out of my control.

15 THE COURT: I don't see why you can't be in  
16 contact with the physician if Mr. Bennett authorizes it so  
17 that you could be given information about when he is to be  
18 discharged.

19 MS. GATTO: I'm not trying to be difficult, Judge,  
20 it's just this is a hospital and just like any time anyone  
21 is in the hospital, I've had family members in the  
22 hospital, all of a sudden they come in and they say, okay,  
23 you're ready to go, and then you're gone. That's how  
24 hospitals operate. I'm sure that this hospital operates  
25 that way, too. I will certainly make all efforts but there

1  
2 is a chance under this procedure that he will fall through  
3 the cracks and he will be sent to Bellevue, that's the  
4 chance we take. I think that's very sad here. You have an  
5 individual who is willing to sign the bond, you have family  
6 members who are willing to sign the bond, this isn't me  
7 making an argument to be ROR because he doesn't want to be  
8 under conditions, he doesn't think he can survive under  
9 conditions, he doesn't think he can comply with conditions.  
10 We all think he can, he wants to, but because he's in the  
11 hospital because he tried to take his life six weeks ago,  
12 he can't. And so it's an entirely unusual situation, I  
13 recognize, I appreciate the Government's arguments. If this  
14 were a typical case and we were on the outside I would not  
15 be asking for ROR, but in this circumstance, Judge, where  
16 everybody wants to sign a bond, everybody wants conditions  
17 to comply with to prove to the Court, but we can't.

18 THE COURT: All right, I'm going to release Mr.  
19 Bennett into his own recognizance and I'll direct that a  
20 bail review hearing be scheduled within 24 hours of his  
21 discharge from the hospital. What date would you like for  
22 a preliminary hearing date, Ms. Gatto?

23 MS. GATTO: We'll waive till the 30<sup>th</sup> day, Your  
24 Honor.

25 THE COURT: It will be the 13<sup>th</sup> day of January,

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

47

2014 --

MS. LESTER: Fifteen.

THE COURT: I'm sorry, 2015. All right, is there  
anything else that we need to address?

MS. LESTER: No, Your Honor.

THE COURT: Thank you, good night.

MR. GATTO: Thank you, Your Honor.

(Whereupon the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, United States of America versus Charles A. Bennett, Docket #14mag2770, was prepared using digital electronic transcription equipment and is a true and accurate record of the proceedings.

Signature\_\_\_\_\_

Date: December 16, 2014